

Small Entity Compliance Guide

Subject: HUBZone Program Final rule – definition of employee

Overview:

History of the current situation: On January 26, 2007, the SBA published in the Federal Register, 72 FR 3750, a proposed rule to amend the HUBZone program's definition of the term "employee." In this proposed rule, SBA sought to revise the definition of the term "employee" to (1) delete the full-time equivalency requirement; (2) specifically allow HUBZone small business concern (SBC) to count leased or temporary employees or employees obtained through a temporary agency, professional employee organization (PEO) arrangement or union agreement, as employees; (3) specifically state that SBA relies on the totality of circumstances as further defined by Size Policy Statement No. 1 when determining whether individuals are employees of a concern; (4) explain that volunteers are not employees; (5) define volunteers as those persons that receive no compensation; and (6) address the status of individuals that own all or part of the SBC but receive no compensation for work performed.

Problem that this rule addresses:

The current employee definition does not address a number of unique employer/employee relationships; including situations where employees are obtained from leasing concerns, temporary employment agencies, union organizations and professional employer, co-employment firms. This revised, comprehensive definition will simplify applicant understanding and clarify the Program's statutory employee requirements.

Small Business Compliance:

The final rule will be effective six months from the date of publication in the Federal Register. This six month timeframe will allow certified firms adequate time to make necessary changes required to comply with the new definition. After this date, all certified firms must be in compliance with the new definition or face possible decertification action. Firms that fail to comply with the new definition requirements are required to notify SBA consistent with 13 CFR Part 126.501. Failure to notify SBA may result in decertification. The new definition will apply to all aspects of Program certification, including new applications, recertification actions, protests, and program examinations.

Contact Information:

Mariana Pardo, Deputy Director, HUBZone Program Office, (202) 205-2985,
mariana.pardo@sba.gov

Notice:

Small Entity Compliance Guides are prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. 104-121 as amended by U.S. Troops Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Pub. L. 110-28. The statements in these documents are intended solely as guidance to aid in complying with the associated rule. Compliance with this Guide is not a substitute for adhering to the requirements of the rule and in no circumstances will compliance with the guide have any legal effect on whether you have fulfilled the rule’s requirements. Those Guides may not apply in a particular situation based upon the circumstances, and SBA retains the discretion to adopt approaches on a case-by-case basis that differ from these Guides where appropriate. SBA may decide to revise these Guides without public notice to reflect changes in SBA’s approach to implementing a rule or to clarify and update text. To determine whether SBA has revised these Guides, contact the Program Office that issued the rule.